APPEAL NO. 151663
FILED OCTOBER 8, 2015

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). A contested case hearing was held on July 27, 2015, in Fort Worth, Texas, with (hearing officer) presiding as hearing officer. The hearing officer resolved the disputed issues by deciding that: (1) the compensable injury of, extends to rotator cuff syndrome/tendinopathy, shoulder impingement, biceps tendinopathy, and ruptured biceps tendon; (2) the respondent (claimant) reached maximum medical improvement (MMI) on March 28, 2015; (3) the claimant's impairment rating (IR) is one percent; and (4) the claimant's average weekly wage (AWW) is $344.46.

The appellant (carrier) appeals the hearing officer's determinations of the extent of injury, MMI, and IR based on sufficiency of the evidence. The carrier contends that the hearing officer relied on the designated doctor's report which is legally insufficient to support a determination that the compensable injury extends to the conditions in dispute. The claimant responded, urging affirmance.

The hearing officer's determination that the claimant's AWW is $344.46 has not been appealed and has become final pursuant to Section 410.169.

DECISION

Affirmed in part and reversed and rendered in part.

The parties stipulated that: (1) on, the claimant sustained a compensable injury; (2) the accepted compensable injury is a left shoulder sprain; and (3) (Dr. F) is the Texas Department of Insurance, Division of Workers' Compensation (Division)-appointed designated doctor to address MMI, IR, and extent of injury.

EXTENT OF INJURY

The hearing officer's determination that the compensable injury of, extends to rotator cuff syndrome/tendinopathy, shoulder impingement, biceps tendinopathy, and ruptured biceps tendon is supported by sufficient evidence and is affirmed.

IR

The hearing officer's determination that the claimant's IR is one percent based on Dr. F's certification is supported by sufficient evidence and is affirmed.

MMI

Section 401.011(30)(A) defines MMI as "the earliest date after which, based on reasonable medical probability, further material recovery from or lasting improvement to an injury can no longer reasonably be anticipated." Section 408.1225(c) provides that the report of the designated doctor has presumptive weight, and the Division shall base its determination of whether the employee has reached MMI on the report of the designated doctor unless the preponderance of the other medical evidence is to the contrary.

The hearing officer determined that the claimant reached MMI on March 28, 2015, with a one percent IR based on the certification of Dr. F, the designated doctor. There is no certification from Dr. F, the designated doctor, or any other doctor, that certified that the claimant reached MMI on March 28, 2015.

Review of the record shows that Dr. F examined the claimant on April 1, 2015, and certified in a Report of Medical Evaluation (DWC-69) that the claimant reached MMI on March 26, 2015, with one percent IR. Dr. F explained in his narrative report dated April 1, 2015, that the claimant had reached MMI on March 26, 2015, because that is the date the claimant completed her last therapy session. The hearing officer states in the Discussion portion of his decision that Dr. F "determined [the] [c]laimant reached MMI on March 28, 2015, with a [one percent IR]. [Dr. F] determined that date of MMI based upon [the] [c]laimant completing her last physical therapy session on that date. The [d]esignated [d]octor 's certification is supported by the preponderance of the other evidence." This certification considers and rates the entire compensable injury which includes rotator cuff syndrome/tendinopathy, shoulder impingement, biceps tendinopathy, and ruptured biceps tendon.

It is clear from the hearing officer's discussion, the evidence, and determination that the hearing officer was persuaded that Dr. F's certification of MMI and IR was not contrary to the preponderance of the other medical evidence. The hearing officer mistakenly referenced an incorrect date of MMI, March 28, 2015, in the Discussion portion of the decision, Finding of Fact No. 4, Conclusion of Law No. 4, and his decision. Given that the evidence reflects that Dr. F actually certified that the claimant reached MMI on March 26, 2015, with a one percent IR, we reverse the hearing officer's MMI determination. We reverse the hearing officer's determination that the claimant reached MMI on March 28, 2015, and we render a new decision that the claimant reached MMI on March 26, 2015, to conform to the evidence in the record.

SUMMARY

We affirm the hearing officer's determination that the compensable injury of, extends to rotator cuff syndrome/tendinopathy, shoulder impingement, biceps tendinopathy, and ruptured biceps tendon.

We affirm the hearing officer's determination that the claimant's IR is one percent.

We reverse the hearing officer's determination that the claimant reached MMI on March 28, 2015, and we render a new decision that the claimant reached MMI on March 26, 2015.

The true corporate name of the insurance carrier is **NEW HAMPSHIRE INSURANCE COMPANY** and the name and address of its registered agent for service of process is

CORPORATION SERVICE COMPANY
211 EAST 7TH STREET, SUITE 620
AUSTIN, TEXAS 78701-3218.

Veronica L. Ruberto
Appeals Judge

CONCUR:

Carisa Space-Beam
Appeals Judge

Margaret L. Turner
Appeals Judge